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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,460	02/17/2004	Timothy M. Holub	306257	1388

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LEYDIG, VOIT & MAYER, LTD.  
(SEATTLE OFFICE)  
TWO PRUDENTIAL PLAZA  
SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3636

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,460	<b>Applicant(s)</b> HOLUB, TIMOTHY M.	
	<b>Examiner</b> Tamara L. Graysay	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because of the following:
  - a. They fail to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 228, 230, 240, 324, 328, 330, 332 and 340 (FIGS. 4, 5).
  - b. They fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: “32” [0017] and “132” [0027]. The reference characters should be added to FIGS. 1 and 3, respectively.
  - c. They fail to comply with 37 CFR 1.84(p)(4) because FIG. 3 depicts reference character(s) 80 as the top portion of pole 122; however, the description at [0027] mentions the top portion 82 of the pole 122. The reference character in FIG. 3 should be changed because reference character 80 is used to depict the middle portion of the pole 122.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

2. The disclosure is objected to because of the following informalities:
  - a. [0025] line 6: FIG. 3 should be FIG. 2.
  - b. [0027] line 4: tent sidewalls 28 and tent side edge 30 should be tent sidewalls 128 and tent side edge 130 because the description is of FIG. 3.
  - c. [0028] line 5: sidewalls 28 and edges 30 should be sidewalls 128 and edges 130 because the description is related to poles 122 which are depicted in FIG. 3.
  - d. [0028] line 8: FIGS. 2 and 4 should be FIGS. 2 and 3.
  - e. [0030]: 22 should be 122, 20 should be 120 (two occurrences), 28 should be 128, 24 should be 124, and 72 should be 82 because the remainder of the paragraph is directed to FIG. 3.
  - f. [0035]: No references have been cited so the paragraph should be deleted.  
Further, if a patent were to issue, confusion would arise because references listed in the “references cited” section are not incorporated by reference.
  - g. [0036]: There are no recitations of ranges of values found in the specification, so the fourth sentence is confusing.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "said at least one pole sleeve." There is insufficient antecedent basis for this limitation in the claim. The claim has been treated as dependent upon claim 12, which provides antecedent basis for the limitation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols (US-4352362).

a. Claim 1: Nichols discloses a tent (10) comprising sidewalls (13a, 13b, etc) including an upper portion (the upper portion is shown in FIG. 4); and at least one pole (portions 20 and 22 together comprise at least one pole) having two ends (50, 52). The pole is bent to extend along the sidewalls (as depicted at the left and right sides of FIG. 1). The pole is attached at the ends (50, 52) at the floor edges (54, 56, respectively). The pole is asymmetrically spaced from the sidewalls (e.g., FIG. 7).

b. Claims 2 and 3: The pole, as applied above, is attached to two diagonally opposite corners (54, 56) of the tent.

c. Claim 4: The top of the tent top is spaced from the pole a first spacing (e.g., FIGS. 1, 4). The bottom of the tent corner is spaced from the pole a second spacing (e.g., FIGS. 1, 3). Between the tent top and tent corner the pole is a third spacing from the tent (e.g., FIGS. 1, 7).

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d. Claim 5: The third spacing (e.g., defined by sleeve 24b) is greater than the first spacing (e.g., defined by 24a).

e. Claims 11-14: Nichols depicts at least one structure including a plurality of pole sleeves (e.g., 24a, 24b, 24c; 80a, 80b, 80c, 80d) comprise an outer edge wherein spacing of the outer edge from the side edge of the tent (13a, 13b) is asymmetrical (see, for example, FIGS. 1, and 7).

f. Claims 15-18: Nichols discloses a tent (10) comprising sidewalls (13a, 13b, etc) including an upper portion (the upper portion is shown in FIG. 4) and defining side edges (e.g., the junction of sidewalls 13a, 13b is a side edge); and at least one pole (portions 20 and 22 together comprise at least one pole) having two ends (50, 52). The pole is bent to extend along the sidewalls (as depicted at the left and right sides of FIG. 1). The pole is attached at the ends (50, 52) at the floor edges (54, 56, respectively). Nichols depicts at least one structure including a plurality of pole sleeves (e.g., 24a, 24b, 24c; 80a, 80b, 80c, 80d) comprise an outer edge wherein spacing of the outer edge from the side edge of the tent (13a, 13b) is asymmetrical (see, for example, FIGS. 1, and 7).

g. Claims 19 and 20: The Nichols pole, as applied in the preceding paragraph, is attached to two diagonally opposite corners (54, 56) of the tent.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US-4352362) as applied to claim 5, and further in view of Nelson (US-6194329).

Claim 6: Nelson discloses the common use of a rain fly (1:26-52) over a tent to form a double wall system in order to provide added protection from driving wind and/or rain for all the openings of the tent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tent of Nichols to include a rain fly, such as suggested by Nelson, in order to provide added protection from driving wind and/or rain for all the openings of the tent. It is inherent that a rain fly used over the tent would be asymmetrically spaced from the tent because the Nichols poles are asymmetrically spaced from the tent and the rain fly rests on the poles when installed over the Nichols tent.



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6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US-4352362) as applied to claim 5, and further in view of Benson (US-2938524).

Claim 7: Benson teaches locating the end of the poles close to the corners of the tent in order to accommodate the curve of the bent pole that bends radially upwardly and outwardly with reference to the center of the tent and thereby using smaller and less costly rods (e.g., 5:27-50; FIG. 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Nichols attachment so that the third spacing is less than the second spacing, such as taught by Benson, in order to accommodate the curve of the bent pole that bends radially upwardly and outwardly with reference to the center of the tent and thereby using smaller and less costly rods.

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7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US-4352362) and Benson (US-2938524) as applied to claim 7, and further in view of Nelson (US-6194329).

Claim 8: Nelson discloses the common use of a rain fly (1:26-52) over a tent to form a double wall system in order to provide added protection from driving wind and/or rain for all the openings of the tent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tent of the Nichols and Benson combination to include a rain fly, such as suggested by Nelson, in order to provide added protection from driving wind and/or rain for all the openings of the tent. It is inherent that a rain fly used over the tent would be asymmetrically spaced from the tent because the Nichols poles are asymmetrically spaced from the tent and the rain fly rests on the poles when installed over the Nichols tent.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US-4352362) as applied to claim 4, and further in view of Benson (US-2938524).

Claim 9: Benson teaches locating the end of the poles close to the corners of the tent in order to accommodate the curve of the bent pole that bends radially upwardly and outwardly with reference to the center of the tent and thereby using smaller and less costly rods (e.g., 5:27-50; FIG. 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Nichols attachment so that the third spacing is less than the second spacing, such as taught by Benson, in order to accommodate the curve of the bent pole that bends radially upwardly and outwardly with reference to the center of the tent and thereby using smaller and less costly rods.

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9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (US-4352362) and Benson (US-2938524) as applied to claim 9, and further in view of Nelson (US-6194329).

Claim 10: Nelson discloses the common use of a rain fly (1:26-52) over a tent to form a double wall system in order to provide added protection from driving wind and/or rain for all the openings of the tent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tent of the Nichols and Benson combination to include a rain fly, such as suggested by Nelson, in order to provide added protection from driving wind and/or rain for all the openings of the tent. It is inherent that a rain fly used over the tent would be asymmetrically spaced from the tent because the Nichols poles are asymmetrically spaced from the tent and the rain fly rests on the poles when installed over the Nichols tent.

***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Blanchard (US-2646057) depicts a pole (23) having a third spacing at the middle portion that is greater than the second spacing at the corner.
- Howe (US-5197504) depicts a pole having a third spacing at the middle portion that is greater than the second spacing at the corner (FIG. 5 view) (FIG. 1, 5).
- Weber (US-5273142) depicts a pole (48, 50) having a third spacing at the middle portion that is greater than the second spacing at the corner (FIG. 5 view).
- Kramer (DE-3213781) teaches a clip and webbing attachment means.
- Tamaura (JP-5171838) depicts a pole (15) having a third spacing at the middle portion that is greater than the second spacing at the corner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tamara L. Graysay  
Examiner  
Art Unit 3636

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